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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 637.

ALTA VALENTINE,

Petitioner,

v.

LESTER LAMONT and MARION LAMONT, his wife, BOARD OF EDUCATION of the CITY OF JERSEY CITY, Hudson County, a body corporate, *et al.*,

Respondents.

REPLY BRIEF OF PLAINTIFF TO BRIEFS OF RESPONDENTS.

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Reply to Brief of Respondents, Lester Lamont and wife.

An examination of the brief of counsel for the respondents, Lester Lamont and wife discloses that he makes no attempt to answer the matters set forth in petitioner's brief and the argument presented thereon.

Under Point One he argues that the New Jersey Statutes contain no reference as to the limitation of the fee taken therein and thereunder.

Under Point Two he argues that a fee simple absolute can be acquired by eminent domain.

Under Point Three he argues that a judgment in favor of the plaintiff (petitioner) would violate the 5th Amendment of the U. S. Constitution.

All of this argument has no bearing whatever upon the question as to whether or not this court should grant

its writ of certiorari to review the judgment of the New Jersey Supreme Court to determine whether there has been a denial of the rights guaranteed under the 14th Amendment.

And finally he concludes with his own statement that the State Court decisions in this case are correct; that there is no conflict of decision; and that there is no important question of Federal law which would entitle petitioner to allowance of writ herein sought.

Counsel has not understood or he decided to ignore all of the points made by petitioner and the authorities cited in support thereof.

Therefore, there is nothing in his brief that requires any further reply thereto by the petitioner.

Reply to Brief of Respondent, Board of Education.

An examination of the brief of counsel for the respondent, Board of Education discloses that he makes no attempt to answer the matters set forth in petitioner's brief and the argument presented thereon.

Under I he merely makes certain denials but he does not point out in any way how or wherein the argument of Petitioner under Point I of her supporting brief (p. 11 etc.), is in any way erroneous nor does he claim that the cases cited by petitioner do not support the argument advanced.

Neither does he cite any authorities holding contrary to the cases cited by the plaintiff.

Under II he gives a summary of facts but no facts that dispute and no argument that refutes the claim under II of petitioner's brief that this court has not heretofore determined whether or not title in fee simple absolute can be acquired by eminent domain proceedings.

Under III he makes certain contentions but nothing therein contained is addressed or a reply to Point III of petitioner's brief, under which she claims that this court has not heretofore determined whether or not, where the estate to be taken under eminent domain proceedings is not expressly defined and an easement is sufficient for the purpose, no greater estate can be taken.

He contends that the federal question sought to be reviewed was not first raised in the New Jersey Supreme Court by the petition for re-hearing and quotes from petitioner's brief in that court, the statement by petitioner that the federal question has been implicit in this case since its inception, to support his contention.

Implicit and raised are by no means synonymous.

Implicit is defined as "Fairly to be understood though not specifically stated;" (Standard Dictionary 1929, p. 1235).

In January, 1952 when petitioner's original suit was instituted, the only constitutional question raised was based on the New Jersey Constitution (R. 4).

The statement in the brief on petition for rehearing (R. 93) that the applicability of the due process clause of the 14th Amendment has been implicit and can only mean that it has always been in the case though not actually raised until presented on the petition for rehearing.

The brief expressly states that previous to the filing of the petition for re-hearing it was not believed to be necessary to raise or discuss this question.

And this was because of the decision in the *Frelinghuysen* case (R. 92).

So that the statement that a question is implicit negatives the thought that it has been presented rather than supports it.

And this is true because petitioner then believed that it was not necessary to raise this question in view of the previous decisions in the New Jersey courts.

An examination of the reference by counsel on page 4 of his brief to R. 73 discloses that this reference is not to the Federal Constitution nor any federal question.

It is a reference to the New Jersey Constitution only.

He next states that it cannot be successfully contended that petitioner has been deprived of her day in court and that judgment was entered against her without due process of law.

However, his references to the record do not support his statement and no reference to any authorities is cited.

Nor does he state in his brief how or when the federal question was raised by petitioner or decided by the court.

There never was any such issue raised by the pleadings or otherwise.

He next argues that if the defendant (board) never acquired a fee simple absolute to the premises in question, then the clause in the New Jersey Constitution, "Private property shall not be taken for public use without just compensation" is meaningless.

However, on page 5 of his brief he admits that if the private property of A were taken and given to B, "such a procedure would be unconstitutional."

But he says that it "is not applicable to the facts here involved."

He apparently has overlooked the argument on page 20 of petitioner's brief.

If the State of New Jersey could not itself pass an act transferring the private property of A to B, then how can it authorize a condemnor to transfer to B the private property acquired from A by condemnation?

And it must be conceded that if the Board in this case acquired a fee simple absolute title to the condemnee's private property, the Board could thereafter, at any time, convey such title at will.

The result is the same whether the State passes an act taking the private property of A and giving it to B or authorizes a condemnor to do so.

And to meet the Board's challenge to point out in the record the evidence to support the premise that in this case the private property of the condemnee was taken by the Board as condemnor and later conveyed to the respondents Lester Lamont and wife, private citizens, petitioner refers to Petitioner's brief pages 3 and 4 and the references to the record cited to support the statements, none of which have been denied by anyone.

He next contends that petitioner's brief does not comply with Rule 38 of this court.

This contention is so vague and indefinite that it seems to permit of no other answer than to assert that it does comply with such rule.

He next states there is no doubt or uncertainty concerning the questions presented by the petitioner.

How does he reconcile the decisions both Federal and State cited by petitioner with the decision by the New Jersey Supreme Court in this case, and particularly those cases cited under III of petitioner's brief?

It is, therefore, respectfully submitted that there is nothing in this brief that meets or overcomes the argument of the petitioner in her supporting brief upon the questions raised.

Reply to Brief of Respondent Anthony Lamont.

An examination of the brief of counsel respondent, Anthony Lamont discloses that he likewise makes no attempt to answer the matters set forth in petitioner's brief as to the merits of her application for a writ of certiorari.

He cites the case of *O'Hara* v. *Dist. of Columbia,* 147 Fed. 2d, 146.

In that case the Statute provided:

> "Title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in the declaration shall vest in the District of Columbia."

The declaration did not specify what estate was to be taken. The court held that under the circumstances an estate in fee simple absolute was intended and the statute was controlling.

The language in the opinion that "In the absence of special circumstances it would be reasonable to presume that no estate less than absolute title is sufficient for school purposes," has no judicial value, as a precedent.

This determination was not necessary in view of the holding of the court.

It does not appear that this question was raised, argued or decided.

It was merely a voluntary presumption at the best.

Therefore, it was entirely obiter.

In addition no constitutional question, federal or state, was raised or decided in that case.

Therefore, it is no authority upon the question as to whether or not a fee simple absolute title can be acquired to property intended for school use, without violating the 14th Amendment to the Federal Constitution.

Neither did the decisions of the New Jersey Courts in this case consider or decide this question.

He then states on page 2 of his brief that petitioner has not set forth facts to give this court a clear-cut picture of the real issues and that he will do so.

He admits on page 3 of his brief that the only issue was:

> "What was the quality of the estate in the said lands acquired by the Board of Education of Jersey City through its condemnation proceedings?"

It is respectfully submitted that every fact essential in this case to the determination of this issue was included in the Summary found on pages 3, 4, and 5 of petitioner's petition and brief.

And none of the facts essential to such determination, appearing in counsel's statement and so essential, have been omitted by petitioner.

He then proceeds on pages 3, 4 and 5 of his brief to uphold the judgment of the New Jersey Court by citing the decisions of that court and the holding of the trial court and Appellate Decision in this case, all three of which held that the Constitution of New Jersey did not prohibit the acquiring of lands by condemnation in fee simple absolute if just compensation be paid.

But in none of these courts was the "due process of law" clause discussed or decided and even if it had been it must be conceded that none of these courts is the final arbiter upon a question arising under the federal constitution.

He states on page 5 of his brief that the *Summerill* and *Frelinghuysen* cases were not the recognized law in New Jersey as bearing on the instant case because the first case was a traction case and the second a Highway case.

It is not true, as he states, that the New Jersey Supreme Court distinguished these two cases from the case at bar and held they had no application.

In this case the Supreme Court stated that under our Statute when the State took the land for highway purposes it acquired an easement for public travel only, for it was manifest that the power was to take so much of the title as was essential to the use of public travel (R. 83), citing the *Frelinghuysen* case, but it did not point out any distinction indicating why it was necessary to acquire a fee simple absolute title in case of a school and not necessary in the case of a highway.

In the *Summerill* case there was no attempt made to distinguish that case from the present case. The holding in the *Summerill* case was not distinguished but was expressly overruled.

He states on page 5 of his brief that the cases in this court cited by the petitioner have no pertinence to the issues in the case at bar.

And he states on page 6 of his brief that the petitioner has been accorded three hearings but he wholly ignores the fact that in the first two of these hearings the "due process clause" was not presented, heard, considered or decided; nor was it presented, considered or decided in the Supreme Court on the first argument in that court on which the opinion was written upon which the judgment was based.

It was not until the petition for re-hearing was presented that it was first argued, but even though heard no opinion was expressed thereon and the result was a mere denial of the petition.

And he must concede that there was at least one, and perhaps more hearings, in the *Brinkerhoff* case before it came to this court.

On page 3 of his brief he concedes that there was an issue as to the quality of the estate acquired by the Board through its condemnation proceedings. Nowhere does he claim that this court has ever passed upon this question, construed with the "due process clause" of the Federal Constitution in mind.

The quotation on page 6 of his brief, from the opinion of Justice Brandeis is direct authority for the argument of the petitioner that this court may review decisions of state courts on federal questions, and he cannot deny that the effect of the "due process clause" on title to lands acquired by Eminent Domain proceedings is a federal question that has never been decided by this court.

His statement on the same page, that the *Fiske* case involved the interpretation of a State criminal statute and has no relevance here is proof that he has either not read or he has not understood the reasoning in this case quoted on page 17 of petitioner's supporting brief.

Dismissing the *Gehner* case with the words no relevance shows that counsel has again either wilfully ignored an argument advanced by petitioner or failed to understand it.

On page 7 of his brief he quotes from the same page of the opinion in this case as the petitioner but he makes no reference to the quotations found on pages 14 and 15 of petitioner's supporting brief and the argument of petitioner based thereon.

He apparently has not understood the purpose of these quotations or it may be that he was not able to refute the soundness of the argument of petitioner.

He dismisses the *Saunders* case on page 7 of his brief with the words not relevant because petitioner has had every opportunity to present her case.

But he makes no attempt and has utterly failed to show that the circumstances cited in that case, as sufficient

to move this court to review the judgment of a state court, are not all present in the case at bar.

He says she had every opportunity to present her case but makes no reply to the argument on page 14 of petitioner's supporting brief that she was not bound to anticipate an adverse holding or in advance to invoke Federal protection.

He dismisses the *Wilkinson* case on page 7 with the words no relevance.

However, here again, he fails to realize the relevance of the quotation on page 19 and argument on page 20 of petitioner's supporting brief or has chosen to ignore it.

He discusses the *Harsh* case on page 7 of his brief.

He states the construction of a lost "deed", adverse possession and a strained interpretation of the eminent domain statute were involved.

This is not true.

The defendants claimed title to oil and gas lease by virtue of

(1) a deed then lost;

(2) ancient grant;

(3) adverse possession.

and a later lease executed by the school trustees.

The court found that the alleged lost deed had not been proved; that ancient grant had not been proved; and that there was no adverse possession.

The case turned on whether the school trustees could execute a lease based on their title, which "title, in its inception was the title obtainable by Eminent Domain."

The court held that the trustees did not obtain a title under which their lease was valid and that all they acquired was an easement for school purposes.

However, he failed to discuss the *Miller* case, cited on page 21 of petitioner's brief.

The purpose in citing the *Harsh* case and the *Miller* case was to show that both Federal and State Courts have held that where the estate to be taken is not defined and an easement is sufficient for the purpose, no greater estate can be taken.

The respondents have not challenged this principle or cited any case, or any authority with supporting decisions, that is contrary, except the case now under consideration.

It cannot be successfully denied that a construction of the "due process clause" is finally within the sole jurisdiction of this court.

Therefore, it is respectfully submitted that a writ of certiorari should be granted in this case.

Respectfully submitted,

Louis G. Morten,
Counsel for petitioner.